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Protecting the family. Improving the practice.

*American Academy
of Matrimonial Lawyers*

June 30, 2003

Supreme Court Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: Child Support Formula Manual

Dear Clerk:

On behalf of the Michigan American Academy of Matrimonial Lawyers (A.A.M.L.), I'm supplementing previous comments made in writing and/or verbalized to the court and the SCAO.

2.11(A)(1) Deductions for alimony spousal support paid in the same case or to a third party in a prior action should be a deduction when computing child support.

Rationale: If child support is calculated without deducting alimony from the payer's income, the payer is paying child support on income already paid to the payee which is unavailable to payer. It is inequitable to force a payer to pay child support from income they don't have available.

Section 1.04(C) Deviation - Application of Adjustment/Deviation from Formula

The A.A.M.L. favors use of language using words "just and approximate" combined with a burden of proof standard of "clear and convincing" for a deviation. This provides some flexibility for benefit of families in particular children not currently available in the guideline manual or proposed revisions.

Rationale: If the court adopts the current recommended revision, families cannot maximize the net income to payee who likely is the primary care giver of the children. The Internal Revenue Code Section 71 and Section 215 are designed to benefit families by making more net income available to families. When there is not reasonable flexibility to deviate from the presumptive guideline formula to provide more available income for payer and payee, children and families are deprived of income that

assists in the support of children.

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There are three (3) public policy issues involved:

1. Children are entitled to support from both parents.
2. Parents and the courts should maximize support available for the children.
3. There should be reasonable uniformity in the courts throughout the state when child support is set.

All three public policies can be met when setting child support if the guideline manual provides reasonable flexibility to deviate using a standard for deviation of "clear and convincing". This standard allows the court (gatekeeper) to determine if the "clear and convincing" standard to deviate is met. The "clear and convincing" burden is a high standard but allows some flexibility. Even if the parties deviate by consent, the court still retains jurisdiction as the gatekeeper to approve or disapprove. There should also be an additional requirement in the manual requiring an expression of intent in any order that deviates from the child support guideline. The requirement for expression of intent can be accomplished by adding a section.

1.04(5) Expression of Intent

"Any adjustment/deviation in a court order shall express the intent of the court or the parties in the order."

Rationale: The reason for the additional language is it serves two purposes.

1. The expression of intent for the deviation assists the parties and the court to understand the intent of the parties and/or the court in future proceedings.

2. The expression of intent can be reviewed by the trial court and the appellate court to determine if the "clear and convincing" standard has been met.

With the above revisions to the Deviation Section 1.04, all three public policies are maintained and benefit children and families. Foreclosing the opportunity to deviate to maximize support for parties negatively impacts children and families. Use of a "clear and convincing" standard to deviate significantly limits deviation and maintains uniformity and maximizes support for children and the parties. Uniformity can and will be maintained with the suggested revision while providing some flexibility.

ADM 2003 223:10 Shared Economic Responsibility

The American Academy of Matrimonial Lawyers supports the concept of a cubed formula that commences at 105 overnights. The rationale has been previously expressed.

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The A.A.M.L. also supports a revision to allow parties by consent to pay support directly to the other party without opting out of the enforcement of support utilizing the Friend of the Court. The burden is on the parties for evidence to show there is an arrearage; however, the Friend of the Court should be available to all parties for enforcement proceedings. When parties opt out of income withholding, this assists the Friend of the Court. Some direct payment cases return to the Friend of the Court for payment by income withholding. Benefits of Friend of the Court enforcement if there is a problem should be available. However, if there is a request for enforcement, the parties thereafter should be required to pay by income withholding through the Friend of the Court/MISDU unless otherwise ordered by the court.

I refer the court back to the last paragraph on Page 6 of my May 30, 2003, letter regarding foreign income. I urge the court to use the average of the past year's exchange rate when setting support for a payer when primary source of income is paid in a foreign currency. I suggest the average of the exchange rate be based on the preceding calendar year (January 1 to December 31) and be reviewed and revised annually. This solution is equitable to children and families, and will provide direction that currently does not exist in the manual.

We oppose the medical manual changes and support the current guideline. Comments were expressed both in writing and at the Supreme Court hearing on June 19, 2003.

The Academy requests and suggests that the court and the SCAO appoint a member from the Academy (A.A.M.L.) and the Michigan Family Law Council to committees impacting family law organized to suggest revision to statutes, court rules, and guidelines and the guideline manual impacting parties involved with the court process. The above two organizations represent both parties and interact with parties using the court process. The membership of both organizations are leaders in the area of family law that deal with the grassroot problems for the clients using the court system.

The Academy thanks the court and appreciates the opportunity to be heard on family issues.

Very truly yours,

Ronald M. Bookholder
Immediate Past President

RMB/jg

cc: Richard Victor, President A.A.M.L.
Susan Paletz, Chairperson Michigan Family Law Section
Hanley Gurwin